IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 893 OF 2005

M/s. Sagar Containers .. Appellant

Vs.

The Commissioner Pimpri
Chinchwad Municipal Corporation
and ors. .. Respondents

Mr. N.V. Vechalekar for appellant.
Mr. N.V. Walawalkar for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : October 19, 2005.

P.C.:

1. Heard the learned counsel for the appellant-plaintiff. The respondent-Corporation issued the first demand notice dated 28/4/2005 for recovery of an amount of Rs.70,588/- towards octroi duty for the period from 1/4/2004 to 31/3/2005 and the subsequent demand notice dated 3/5/2005 for recovery of octroi amount of Rs.19,63,631/- by way of arrears for the period from 1/4/2002 to 31/3/2004. The plaintiff replied these demand notices through his advocate on 17/5/2005 and disputed the claim of octroi duty recovery made by the Corporation. The

Corporation vide its letter dated 14/6/2005 confirmed the demand notices and called upon the plaintiff to remit the demand amount. The plaintiff, therefore, approached the Court of Civil Judge, Jr. Division at Pimpri and filed Civil Suit No.70 of 2005 along with an application at Exh.5 for temporary injunction. The defendants filed an application at Exh.17 under Order VII Rule 11 of C.P.C. raising the issues of incorrect valuation of the suit and pecuniary jurisdiction to entertain and try the suit. By his order dated 5/8/2005 the learned Civil Judge, Jr. Division framed the following two preliminary issues:-

(i) Whether the suit is properly valued?

(ii) Whether this court is having pecuniary jurisdiction to entertain the present suit?

1A. By the impugned order dated 25/8/2005 the application at Exh.17 filed by the defendant-Corporation has been allowed and the court has further

held that it has no pecuniary jurisdiction to try and decide the suit i.e. RCS No.70 of 2005. The court further directed the plaintiff to value the suit for Rs.20,34,290/-.

2. The learned counsel for the plaintiff submitted that the valuation made by him under Section 6(iv)(j) of the Bombay Court Fees Act was proper and the view taken by the trial court that the valuation was required to be done under Section 6(iv)(a) is erroneous. The trial court considered these submissions and by referring to the decisions of this Court in the case of The Municipal Corporation of Greater Bombay vs. Hasham Ismail Mamsa reported in AIR 1972 Bombay 350 and Rajasthan Bhagwati Tiwari V/s. The Municipal Corporation Greater Bombay reported in 2004 (3) Mh. L.J. 290 held that the suit was required to be valued under Section 6 (iv) (a) of the Bombay Court Fees Act, 1959.

3. The plaintiff prayed for the following two substantial reliefs in the suit:

(a) The Hon'ble Court may declare that the notices issued on 28/4/2005 and 3/5/2005 by the defendant-Corporation are bad in law and not tenable according to the law.

(b) The Hon'ble Court may declare that the plaintiff-firm is not liable to pay the amount of Rs.70,588/- and Rs.19,63,631/- to the defendant-Corporation as per the above said notices.

3A. If regards be had to the reliefs claimed by the plaintiff and reproduced hereinabove, certainly, the valuation of the suit was required to be made under Section 6(iv)(a) of the Bombay Court Fees Act and not as per Section 6(iv)(j) of the said Act as contended by the plaintiff. The said sections read as under:-

6. Computation of fees payable in certain suits

(i) ....

(ii) ....

(iii) ....

(iv)(a) **against recovery of any money due as a tax etc.**

. In suits for declaration to obtain adjudication against recovery of money from the plaintiff, whether the recovery is as land revenue or arrears of land revenue or tax or duty or cess or fee or fine or penalty or under any decree or order of a court or any certificate or award other than under the Arbitration Act, 1940, or in any other manner one-fourth of ad valorem fee leviable on the amount sought to be recovered according to the scale prescribed under Article 1 of Schedule I with minimum fee of sixty rupees.

. Provided that when in addition any consequential reliefs other than possession is sought the amount of fee shall be one-half and ad valorem fee on the amount sought to be recovered.

. Provided further that when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee on the amount sought to be recovered.

(iv)(j) **for other declarations.**

. In suits where declaration is sought, with or without injunction or other consequential relief and the subject matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act ad valorem fee payable, as if the amount or value of the subject matter was one thousand rupees.

. In all suits under clauses (a) to (i) the plaintiff shall state the amount at which the values the relief sought, with the reasons for the valuation.

4. Obviously, the plaintiff sought an

adjudication on the right of the Corporation to claim the recovery of Rs.20,34,219/- by way of Octroi duty and, therefore, Section 6(iv)(a) of Bombay Court Fees Act is attracted in the instant case. The view taken by the trial court in the impugned order is supported by the law laid down by this court and the prayers made in the plaint do not leave any doubt that the suit was required to be valued under Section 6(iv)(a) of the Bombay Court Fees Act.

5. The appeal, therefore, fails at the threshold and the same is hereby dismissed in limine.

(B.H. Marlapalle,J.)